

Approved 7/2/08

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
June 5, 2008**

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO
Scott Bickford and Recording Secretary Crystal Robinson

Board Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 6:30 P.M. and took a roll call.

2. Approve the Minutes of the 5/7/08 Meeting: Members discussed a few items in the minutes that they wanted to clarify by listening to the recording of the meeting. Mr. Bickford explained that there was no tape, only Ms. Robinson's typed notes, from which Ms. Sealey had written the minutes.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to table the minutes until the next meeting.
Carried 5-0-0

The chairman, noting that there were many members of the public present, said the meeting would start once everyone was seated. He said procedures for the meeting would allow 5 minutes for anyone to speak, but comments must be relevant to the subject on the agenda. Mr. Remian said he would open the meeting to public comment after the agenda items were addressed.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to allow 5-minute intervals for speakers.
Carried 5-0-0

3. Old Business:

Continuation of Application for Lot Line Change for Property of Richard and Julia Palm, Presented by James Tower, Map 6, Lot 9-19 (Lot Line at 9-18 / 9-19): CEO Bickford stated that Mr. Palm had submitted identical drawings, which the Board was reluctant to sign because the line was not _____. Mr. Remian said he had been absent for the last meeting and Mr. Muddle said there had been two motions: one to change the lot line between Lots 3 & 4 and the other to approve a property line between the same lots. He said the line had been changed on the drawing and there was a notation on the drawing indicating this; Mr. Muddle felt that was sufficient to satisfy the motion that was passed. Mr. Muddle added that the footage did not measure exactly 309.79 long. Mr. Cobey said that 309.79 was what the Board had acted upon. Mr. Ellis said that his reluctance to sign was based on the motion requesting specific language; he did not think the plan should be signed without that specific language present. Mr. Muddle said he did not have the minutes when the plan became available for signature and he had thought it met the requirements of the motion.

Mr. Cobey asked if the plan was dated and Mr. Muddle said it was dated 5/12/08. Mr. Cobey said the plan he was looking at did not have a date, but Mr. Muddle said it had a date stamp.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, to accept the written note on the plan to supercede the motion at the last meeting.
Carried 5-0-0

Mrs. Kalloch asked Mr. Palm if that was acceptable to him and the applicant said it was.

4. Correspondence: The chairman said he had not had a chance to read the correspondence, which he listed, so he would not read them into the record at this time.

5. Continuation of Robbins Mountain Subdivision Denial Reconsideration, Map 5, Lots 83 and 84: Mr. Remian asked the applicant if he had anything new to present. Mr. Tower passed out a letter from the DEP's Becky Maddox and asked that this item be tabled until the signed order was in hand.

Mr. Ellis recalled that there were two or three actions unresolved at the last meeting. He said the first was the issue of financial capacity, which had not been voted on due to the lack of the full Board being present. Mr. Ellis recalled that Mr. Bearor, the applicant's counsel, had said no lots would be sold until all roads were in place. He said the second issue was prompted by the Board's request that the applicant provide new information regarding the line dispute and the third was for survey data. Mr. Ellis felt those issues could now be put to rest. Mr. Muddle said that denial had been based on setback requirements. Mr. Ellis said that three items warranted the denial and he felt they should be acted upon as they were cleared up. He said the only outstanding item was the DEP permit, as the other two had been tabled after last month's discussion.

Mr. Muddle said the March agreement was that the Board would give Mr. Tower until May to provide the necessary information and he would like to see some action one way or another since he had heard for month's that the DEP approval was imminent. Mr. Muddle said he had expressed frustration at past meetings because the Board was waiting for the DEP review, which was not in the hands of the Board or the applicant. He said it did not seem right to reject the application until the Board heard from the DEP. Mr. Remian quoted Becky Maddox as saying that the delay was the result of delinquent submittals and resubmissions from the applicant. The chairman said it was a pattern with this application that there was always something "coming". Mrs. Kalloch said the entire plan had changed completely since it had been denied and she did not think it should be accepted as the original.

Mr. Ellis said the Board had requested _____ regarding the boundary issue and Mr. Tower said he had moved the line away from the disputed line. Mr. Ellis said this was what the Board had requested and would require a review of the lot size requirements, but not a complete review.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to table the item until the signed order was in hand.

Carried 3-2-0 (Mrs. Kalloch and Mr. Remian voted against)

ACTION: Mr. Ellis made a motion, seconded by Mr. Remian, to reconsider the denial.
Motion later withdrawn

Mr. Remian asked if the Board would reconsider the denial. He stated that the Board had been asking for clarification and re-submittals on the three issues (line dispute, DEP approval and financial capacity) and he had not put a time line on it. Mr. Muddle said that at the last meeting the Board was satisfied as to the financial capacity issue since the applicant agreed that all improvements would be completed before any lots were sold. He then said the line dispute was not in the domain of the PB, whose only concern was whether the applicant owned the property shown on the drawing before them. Mr. Muddle concluded by saying the principal thing holding up the reconsideration of denial was the DEP review.

Mr. Ellis said the two other issues had loose ends. One was that the new submittal regarding the lines was not stamped. Mr. Cobey said the Board should table, rather than act on any one of the items without all of them. Mr. Tower said he would like the PB to clarify if it wanted a drawing with a seal and signature or a straightforward uncluttered drawing. Whichever the Board preferred, he said he would provide promptly. Mr. Remian responded that he wanted to see a drawing that included the entire subdivision, stamped and sealed.

ACTION: Mr. Ellis made a motion, seconded by Mr. Remian, to reconsider the Robbins Mt. Subdivision denial.
Motion later withdrawn

Mrs. Kalloch asked upon what basis the denial would be reconsidered. Mr. Ellis said his motion was based upon the last two meetings in which the Board had worked with the applicant. Mrs. Kalloch said a deadline date was needed as well. Mr. Cobey said he did not want to even talk about it until all of the requested submissions were received. Mr. Ellis said he agreed that denial had been based on 3 issues, for which the applicant had been asked to provide submittals. Mrs. Kalloch said that was three months ago and Mr. Ellis agreed. Mr. Muddle asked why it

needed to be reconsidered when it was tabled. Mr. Ellis said he would withdraw his motion, but it would appear next month the same way.

DR everyone want to table the motion?

DC I'm not changing my motion.

EK Nay.

FM Yes.

BE I'll reconfirm that it should be tabled.

6. Application for Land Use Permit by Paul G. and Patricia R. Boisvert, Gay Island, Map 7, Lot 83F: Mr. Boisvert said he and his wife lived on Gay Island during the summer and on weekends in a very simple 20x30 P&B cottage with a composting toilet and gray water system. The cottage was 175' from the water on 4 acres. Their original permit was issued in 1991, but Mr. Boisvert said they never got very far beyond the existing stone foundation.

Mr. Cobey said he didn't see the flood hazard line on the drawings and asked Mr. Bickford where it was. The CEO said he had suggested the applicant not show the line because it was not applicable. Mr. Ellis said the submittal just showed shoreland for the district and Mr. Remian said the PB had stated it was not applicable. Mr. Boisvert said the site was 25' above the rocks and there had never been water remotely close to where the house would be located.

Mr. Remian said he had been out to the site. He stated it was over 50' above the water and you had to go down 25' before you hit the ledge. Most of the flood problems were on the SE side where the elevations were low, he said. Mr. Bickford said it could be made a condition that this be verified. The Board confirmed that the drawing under consideration was dated 11/14/07.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that the application meets standards of Section 15(A) (Minimum Lot Standards).
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(B) was satisfied, subject to verification by the CEO that the installation is at least one foot above the 15-year flood mark.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that Sections 15(C, D, E, F, G & H) do not bear on this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that the application satisfied the requirement of Section 15(I).
Carried 5-0-0

Mr. Ellis said the submittal stated that best management practices did not apply and asked if this was because the stone foundation already existed and there would be no more digging. Mr. Boisvert said he did not plan to cut any trees.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that the application satisfied Section 15(J).
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Sections 15(K through R) did not apply to this application.
Carried 5-0-0

Mr. Muddle asked if there had been an archeological review of the area, noting there was nothing in the submittal. Mrs. Kalloch said she could not remember, but could look it up. Mr. Muddle said it was grandfathered because

there was already a cellar hole when the Boisverts bought the property and there would be no new soil disturbance.

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that Sections 15(S & T) do not apply.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, for a positive finding on Section 16(E)(3)(a through i).
Carried 5-0-0

Mr. Remian asked the applicant how he got potable water and Mr. Boisvert said they brought it in or used other wells on the island.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, to approve the Boisvert application.
Carried 5-0-0

Mr. Bickford reminded the Board that the condition concerning the flood zone needed to be on the plans they were signing.

7. Rock Coast Outfitters, Application for Land Use Permit in Shoreland Zone on Maple Juice Cove, Map 5, Lots 85 & 86, presented by Last Resort Holdings, LLC: Mr. Cobey ascertained that there was no application, though a fee had been paid. Mr. Remian said there was still an open application, which had been denied by the Board but was under appeal. The chairman said he wanted to clarify that there were two applications for this site. The CEO said the appeal had no bearing on this and Mr. Tower said he had submitted the materials requested by the Appeals Board and was awaiting its decision. Mr. Cobey said this was a commercial use in a non-commercial zone. Mr. Remian asked the applicant to explain his proposal.

Mr. Tower stated that Lots 85 and 86 were non-conforming lots even when conjoined. He proposed a recreational use of those lots and believed the use was allowed. He planned a parking area with 18 spaces, a pathway to the water and construction of a ramp and float to provide access to the water. This access would provide the opportunity to take groups of people on kayaking trips and return for a prepared meal on the site. Mr. Tower said gazebo-type structures would be mounted on skids, to be seasonally placed in the position shown on the drawing; off-season, they would be stored on the parking area. In addition, there would be racks to hold the kayaks.

Mr. Tower said he had shown the drainage way and said the Board had read a letter from the DEP that said this was a stream. In accordance with that, he had shown a 25' setback from the stream and declared there would be no disturbance of soil. He proposed no permanent structures within 25' of the high water line. The developer said the parking lot would handle storm water through two bio-remediation and retention cells. His drawing showed the flood plain (AE 10' flood plain), the highest annual tide at elevation 6.2 and the contour at 6.5.

Mr. Cobey said this was a commercial use and improper for the Board to listen to until there had been a zoning change.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that we close the presentation.
Carried 5-0-0

Mr. Muddle asked why the presentation should be closed and Mr. Cobey replied that the Board should not review something in the wrong zone. Mr. Ellis said there was no signed application and the town's definition of a recreational facility excluded boat-launching facilities. Therefore, he said, this proposal was not recreational but commercial. Since there was no application at this time, Mr. Ellis agreed that the application did not fit the use. Mrs. Kalloch said there was also wildlife habitat on those shores. Mr. Muddle said he wouldn't consider a firing range a water-dependent use, to which Mr. Cobey responded that it was unlawful to discharge a firearm within 100 yards of a residence.

8. New Business: None

9. Public Discussion: None

ACTION: Mr. Muddle made a motion, seconded by Mr. Cobey, to adjourn at 7:45 P.M.
Carried 5-0-0

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Respectfully submitted,

Deborah E. Sealey
Recording Secretary